IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14323 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJUBHAI PALABHAI SATIYA - Petitioner(s)

Versus

COMMISSIONER - Respondent(s)

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Appearance :

MR GK RATHOD for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,
MR RM CHHAYA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/09/2005

ORAL JUDGMENT

1. In the present petition, the petitioner workman has challenged the legality of an award dated 19/6/2004

passed by Labour Court, Bhavnagar. By the impugned award the Labour Court was pleased to provide for compensation of Rs. 5,000/- to the workman. Since the Labour Court did not provide for reinstatement or back wages, the workman concerned has filed the present petition challenging the impugned award.

2. It is not in dispute that the workman was not engaged by the respondent after the year 1989. Challenging the termination of March, 1989 reference was raised first in the year 2001. Though, it was the case of the workman before the Labour Court that he has worked for 196 days for the period between 17/9/1988 to 31/3/1989, there was no material on record to establish this averment. In fact the respondent employer had contended that the workman was given a fixed term appointment from 3/3/1989 to 31/3/1989. Labour Court therefore came to the conclusion that the workman had not completed 240 days of work during the relevant period even according to his own say and, therefore, there was no breach of the provisions of Section 25 F of the Industrial Disputes Act.

3. The Labour Court however observed that after

terminating the petitioner new persons were engaged as guards. The Labour Court therefore found that the employer breached the provisions of Section 25 H of the Industrial Disputes Act. The Labour Court further observed that since the employer did not produce the seniority list required to be maintained under Rule 81 of the Industrial Disputes (Central) Rules, the employer also breached the provisions of Section 25 G of the Industrial Disputes Act. However, considering that the reference was raised 12 years after the event, the Labour Court found it not proper to provide for reinstatement of the workman but granted Rs. 5,000/- as compensation in lieu thereof.

4. Learned advocate Shri Rathod appearing for the petitioner strongly urged that the Labour Court ought to have granted atleast reinstatement if not back wages. He submitted that once reference was made though belated when order regarding the dispute for adjudication was not challenged by the employer, it was not open for the Labour Court to dis-allow the prayer for reinstatement in service. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **Shahaji vs. Exeuctive Engineer, P.W.D. reported in 2005(5) SCALE**

261.

5. In the present case it can be seen that though the workman contended that he had worked for 196 days for the period between 17/9/1989 to 31/3/1989, the employer denied such an allegation and contended that he had worked only for the period between 3rd March 1989 to 31st March, 1989, that too, on a fixed term basis. For engagement of only about one month the workman questioned his further non engagement after nearly 12 years. Though the Labour Court observed that there was breach of the provisions of Section 25 G & H committed by the employer; for previous engagement of only about one month when the reference is raised after nearly 12 years the Labour Court was justified in denying either reinstatement or back wages. And the compensation paid would be proper. It is true that the Hon'ble Supreme Court in the case **Shahaji vs. Executive Engineer (supra)** observed that once a reference is made if there is a delay in making the reference and the termination is found to be illegal the Labour Court could have suitably modified the relief to be granted to the workman in view of the delay. It is well settled that once the reference is made the Labour Court cannot quash the same on the ground of delay. This

however does not mean that the Labour Court could not mould the relief. In the facts and circumstances of the present case the Labour Court was justified in not granting the prayer for reinstatement and provided only for compensation. This does not mean quashing the reference and the power to modulate the relief would include also the grant of compensation. In peculiar facts of the case when the workman had worked only about a month and had raised dispute about his dis-engagement after about 12 years, I do not find that the Labour Court committed any jurisdictional error in not granting reinstatement. The petition is, therefore, rejected. Rule is discharged. No order as to costs.

(Akil Kureshi, J.)

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